PROHIBITED PERSONNEL PRACTICES
WHISTLEBLOWER DISCLOSURES
POLITICAL ACTIVITY

A GUIDE TO
RIGHTS AND REMEDIES
OF FEDERAL EMPLOYEES
UNDER 5 U.S.C., CHAPTERS 12 & 23

U.S. OFFICE OF SPECIAL COUNSEL

TOPICS

5 U.S.C. CHPTRS. 12, 23, 73

PROHIBITED PERSONNEL PRACTICES

WHISTLEBLOWER DISCLOSURES

POLITICAL ACTIVITY

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U.S. OFFICE OF SPECIAL COUNSEL (OSC)

U.S. MERIT SYSTEMS PROTECTION BOARD

KEY LAWS

CIVIL SERVICE REFORM ACT OF 1978

(P.L. 98-454)

WHISTLEBLOWER PROTECTION ACT OF 1989

(P.L. 101-12)

HATCH ACT REFORM AMENDMENTS OF 1993

(P.L. 103-94)

OFFICE OF SPECIAL COUNSEL

REAUTHORIZATION ACT (1994)

(P.L. 103-424)

RESPONSIBILITIES OF AGENCY OFFICIALS

5 U.S.C. § 2302(c)

AGENCY HEADS, AND OFFICIALS WITH DELEGATED PERSONNEL MANAGEMENT AUTHORITY, ARE RESPONSIBLE FOR —

- **PREVENTING PROHIBITED PERSONNEL PRACTICES**
- **COMPLYING WITH AND ENFORCING CIVIL SERVICE LAWS, RULES, AND REGULATIONS**
- **ENSURING THAT EMPLOYEES ARE INFORMED OF THEIR RIGHTS AND REMEDIES (IN CONSULTATION WITH OSC)**

MERIT SYSTEM PRINCIPLES

5 U.S.C. § 2301(b)

(1) RECRUIT, SELECT, AND ADVANCE ON THE BASIS OF MERIT AFTER FAIR AND OPEN COMPETITION.

(2) TREAT EMPLOYEES AND APPLICANTS FAIRLY AND EQUITABLY.

(3) PROVIDE EQUAL PAY FOR EQUAL WORK; REWARD EXCELLENT PERFORMANCE.

(4) MAINTAIN HIGH STANDARDS OF INTEGRITY, CONDUCT, AND CONCERN FOR THE PUBLIC INTEREST.

MERIT SYSTEM PRINCIPLES

5 U.S.C. § 2301(b) *(cont'd)*

(5) USE HUMAN RESOURCES EFFECTIVELY AND EFFICIENTLY.

(6) RETAIN OR SEPARATE EMPLOYEES ON THE BASIS OF THEIR PERFORMANCE.

(7) PROVIDE EMPLOYEES WITH EFFECTIVE TRAINING AND EDUCATION.

(8) PROTECT EMPLOYEES FROM IMPROPER POLITICAL INFLUENCE.

(9) PROTECT EMPLOYEES FROM REPRISAL FOR LAWFUL DISCLOSURES.

COVERED PERSONNEL ACTIONS

5 U.S.C. § 2302(a)(2)(A)

- APPOINTMENT OR PROMOTION
- DETAIL, TRANSFER, REASSIGNMENT, REINSTATEMENT, RESTORATION, OR REEMPLOYMENT
- CH. 75 ADVERSE ACTION, OR OTHER CORRECTIVE OR DISCIPLINARY ACTION
- CH. 43 PERFORMANCE EVALUATION
- DECISION ABOUT CERTAIN PAY, BENEFITS, AWARDS, EDUCATION, OR TRAINING
- DECISION TO ORDER PSYCHIATRIC TESTING OR EXAMINATION
- ANY OTHER SIGNIFICANT CHANGE IN DUTIES, RESPONSIBILITIES, OR WORKING CONDITIONS

PERSONNEL AUTHORITY

THE AUTHORITY TO —

- ***TAKE***
- ***DIRECT OTHERS TO TAKE***
- ***RECOMMEND, OR***
- ***APPROVE***

ANY PERSONNEL ACTION

COVERED POSITIONS

5 U.S.C. § 2302(a)(2)(B); 31 U.S.C. § 9103

- **FOR <u>ALL PROHIBITED PERSONNEL PRACTICES</u>, POSITIONS IN THE —**
  - **COMPETITIVE SERVICE**
  - **CAREER SES**
  - **EXCEPTED SERVICE**
  - **DEPARTMENT OF VETERANS AFFAIRS APPOINTED UNDER TITLE 38, U.S. CODE (MEDICAL CARE PERSONNEL)**
- **FOR <u>WHISTLEBLOWER REPRISAL MATTERS</u> —**
  - **SIMILAR POSITIONS IN CERTAIN GOVERNMENT CORPORATIONS**

NON-COVERED POSITIONS

5 U.S.C. § 2302(a)(2)(B)

- CONFIDENTIAL, POLICY-DETERMINING, POLICY-MAKING, POLICY-ADVOCATING POSITIONS (SCHEDULE Cs)

- POSITIONS EXCLUDED FROM COVERAGE BY THE PRESIDENT

COVERED AGENCIES

5 U.S.C. § 2302(a)(2)(C)

- MOST EXECUTIVE BRANCH AGENCIES
- GOVERNMENT PRINTING OFFICE

NON-COVERED AGENCIES

5 U.S.C. § 2302(a)(2)(C)

- CENTRAL INTELLIGENCE AGENCY, DEFENSE INTELLIGENCE AGENCY, NATIONAL SECURITY AGENCY, AND OTHER FOREIGN INTELLIGENCE AND COUNTER-INTELLIGENCE AGENCIES IDENTIFIED BY THE PRESIDENT
- FEDERAL AVIATION ADMINISTRATION
- FEDERAL BUREAU OF INVESTIGATION (BUT LAW MANDATES ADMINISTRATIVE WHISTLEBLOWER PROTECTION PROCESS)
- GENERAL ACCOUNTING OFFICE
- GOVERNMENT CORPORATIONS ***(EXCEPT*** FOR ALLEGATIONS OF REPRISAL FOR WHISTLEBLOWING)
- U.S. POSTAL SERVICE AND POSTAL RATE COMMISSION

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(1)

DISCRIMINATION *(INCLUDING DISCRIMINATION BASED ON MARITAL STATUS OR POLITICAL AFFILIATION)*

EXAMPLE:

SUPERVISOR JOE REFUSES TO PROMOTE EMPLOYEE JANE BECAUSE JANE IS A REGISTERED REPUBLICAN

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(2)

SOLICITING OR CONSIDERING IMPROPER EMPLOYMENT RECOMMENDATIONS OR STATEMENTS

EXAMPLE:

SELECTING OFFICIAL JOE HIRES APPLICANT JACK BASED ON SENATOR SMITH'S RECOMMENDATION THAT JACK BE HIRED BECAUSE JACK IS A

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(3)

COERCING POLITICAL ACTIVITY, OR TAKING REPRISAL FOR REFUSAL TO ENGAGE IN POLITICAL ACTIVITY

EXAMPLE:

SUPERVISOR JANE TAKES AWAY SIGNIFICANT JOB DUTIES OF EMPLOYEE JACK BECAUSE JACK WON'T MAKE A CONTRIBUTION TO JANE'S FAVORITE CANDIDATE

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(4)

DECEIVING OR OBSTRUCTING ANYONE FROM COMPETITION FOR EMPLOYMENT

EXAMPLE:

SUPERVISOR JOE, LOCATED IN HEADQUARTERS, ORDERS THAT NO VACANCY ANNOUNCEMENTS BE POSTED IN THE FIELD OFFICE WHERE EMPLOYEE JACK WORKS BECAUSE HE DOESN'T WANT JACK TO GET A NEW JOB

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(5)

INFLUENCING WITHDRAWAL FROM COMPETITION TO IMPROVE OR INJURE EMPLOYMENT PROSPECTS OF ANOTHER

EXAMPLE:

SUPERVISOR JANE, IN AN EFFORT TO HIRE EMPLOYEE JOE, TELLS EMPLOYEE JACK — A QUALIFIED EMPLOYEE — THAT HE SHOULDN'T APPLY FOR A POSITION BECAUSE HE ISN'T QUALIFIED AND WON'T BE SELECTED

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(6)

GIVING AN UNAUTHORIZED PREFERENCE OR ADVANTAGE TO IMPROVE OR INJURE THE PROSPECTS OF ANY PARTICULAR PERSON FOR EMPLOYMENT

EXAMPLE:

SUPERVISOR JANE SPECIFIES THAT SPANISH-SPEAKING SKILLS ARE NECESSARY FOR A VACANT POSITION, IN ORDER TO SELECT EMPLOYEE JACK, WHO SPEAKS FLUENT SPANISH. THE POSITION, HOWEVER, DOESN'T REQUIRE SPANISH-SPEAKING SKILLS

UNAUTHORIZED PREFERENCE OR ADVANTAGE

5 U.S.C. § 2302(b)(6)

- MORE THAN ALLEGED FAVORITISM, OR PRECONCEIVED IDEA THAT ONE PERSON MAY BE THE BEST SELECTEE FOR A PARTICULAR POSITION (“*PRESELECTION*”)
- INVOLVES —
  - GRANTING OF SOME ILLEGAL ADVANTAGE
  - INTENTIONAL AND PURPOSEFUL MANIPULATION OF THE SYSTEM TO INSURE THAT ONE PERSON IS FAVORED AND ANOTHER PERSON IS DISADVANTAGED

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(7)

ENGAGING IN NEPOTISM

EXAMPLE:

SECOND-LEVEL SUPERVISOR JANE ASKS FIRST-LEVEL SUPERVISOR JOE TO HIRE HER SON

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(8)

TAKING, FAILING TO TAKE, OR THREATENING TO TAKE OR FAIL TO TAKE PERSONNEL ACTION BECAUSE OF WHISTLEBLOWER DISCLOSURES

EXAMPLE:

SUPERVISOR JOE DIRECTS THE GEOGRAPHIC REASSIGNMENT OF EMPLOYEE JACK BECAUSE JACK REPORTED SAFETY VIOLATIONS TO THE AGENCY'S INSPECTOR GENERAL

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(9)

TAKING, FAILING TO TAKE, OR THREATENING TO TAKE OR FAIL TO TAKE PERSONNEL ACTION FOR —

- **EXERCISE OF APPEAL, COMPLAINT, OR GRIEVANCE RIGHTS**
- **TESTIMONY OR OTHER ASSISTANCE TO PERSON EXERCISING SUCH RIGHTS**
- **COOPERATION WITH OR DISCLOSURES TO THE SPECIAL COUNSEL OR AN INSPECTOR GENERAL**

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(9) *(cont'd)*

EXAMPLE: SUPERVISOR JANE DENIES TRAINING OPPORTUNITIES TO EMPLOYEE JACK BECAUSE EMPLOYEE JACK FILED AN ADMINISTRATIVE GRIEVANCE ABOUT HIS PERFORMANCE RATING

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(10)

DISCRIMINATION BASED ON CONDUCT NOT ADVERSE TO JOB PERFORMANCE

EXAMPLE:

SUPERVISOR JOE, A TEETOTALER, DENIES EMPLOYEE JANE A PROMOTION BECAUSE HE OBJECTS TO EMPLOYEE FREQUENTING OF BARS ON SATURDAY NIGHTS

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(11)

TAKING OR FAILING TO TAKE, RECOMMEND, OR APPROVE A PERSONNEL ACTION IN VIOLATION OF A VETERANS' PREFERENCE REQUIREMENT

EXAMPLE:

SUPERVISOR JANE HIRED EMPLOYEE JACK WITHOUT CONSIDERING VETERAN JENNIFER, WHO WAS INCLUDED ON THE LIST OF ELIGIBLE EMPLOYEES

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(12)

TAKING OR FAILING TO TAKE PERSONNEL ACTION, IF TAKING OR FAILING TO TAKE THE ACTION WOULD VIOLATE ANY LAW, RULE, OR REGULATION IMPLEMENTING OR DIRECTLY CONCERNING MERIT SYSTEM PRINCIPLES

EXAMPLE:

SUPERVISOR JANE TERMINATES THE PROBATIONARY APPOINTMENT OF EMPLOYEE JACK BECAUSE OF JACK'S LETTER TO HIS CONGRESSPERSON COMPLAINING ABOUT INEFFICIENT DELIVERY OF SERVICES BY HIS AGENCY — A VALID EXERCISE OF FIRST AMENDMENT RIGHTS, A LAW IMPLEMENTING A MERIT SYSTEM PRINCIPLE

WHISTLEBLOWER PROTECTION

"[THOSE] WHO CREATE POWER MAKE AN INDISPENSABLE CONTRIBUTION TO THE NATION'S GREATNESS, BUT [THOSE] WHO QUESTION POWER MAKE A CONTRIBUTION JUST AS INDISPENSABLE, ESPECIALLY WHEN THAT QUESTIONING IS DISINTERESTED, FOR THEY DETERMINE WHETHER WE USE POWER OR POWER USES US."

PRES. KENNEDY (1963)

"FEDERAL EMPLOYEE WHISTLEBLOWERS CAN MAKE A VALUABLE CONTRIBUTION TO [OUR] COMMITMENT TO ENSURE EFFECTIVE AND EFFICIENT USE OF TAX DOLLARS BY THE GOVERNMENT. [WE SHARE] THE VIEW IN THE CONGRESS THAT WHISTLEBLOWERS SHOULD BE PROTECTED FROM PUNITIVE ACTION AGAINST THEM IN REPRISAL FOR THEIR DISCLOSURES."

PRES. BUSH, SIGNING WHISTLEBLOWER PROTECTION ACT (1989)

PROTECTED WHISTLEBLOWER DISCLOSURES

(TO SPECIAL COUNSEL / INSPECTORS GENERAL)

5 U.S.C. § 2302(b)(8)

AN EMPLOYEE WITH PERSONNEL AUTHORITY MAY *NOT* —

- **TAKE, FAIL TO TAKE, OR THREATEN TO TAKE OR FAIL TO TAKE**
- **A PERSONNEL ACTION AGAINST AN EMPLOYEE OR APPLICANT**
- **BECAUSE OF ANY DISCLOSURE OF INFORMATION TO THE SPECIAL COUNSEL, INSPECTOR GENERAL OR COMPARABLE OFFICIAL**
- **WHICH THE EMPLOYEE OR APPLICANT REASONABLY BELIEVES**
- **EVIDENCES A VIOLATION OF ANY LAW, RULE OR REGULATION; GROSS MISMANAGEMENT; A GROSS WASTE OF FUNDS; AN ABUSE OF AUTHORITY; OR A SUBSTANTIAL AND**

PROTECTED WHISTLEBLOWER DISCLOSURES
(TO OTHERS)
5 U.S.C. § 2302(b)(8)

SAME LEGAL PROTECTION FOR WHISTLEBLOWER DISCLOSURES TO SPECIAL COUNSEL AND INSPECTORS GENERAL,

UNLESS **DISCLOSURE IS —**

- **PROHIBITED BY LAW, *OR***
- **REQUIRED BY EXECUTIVE ORDER TO BE SECRET FOR NATIONAL SECURITY OR FOREIGN AFFAIRS**

ELEMENTS OF PROOF:
REPRISAL FOR WHISTLEBLOWING
5 U.S.C. §§ 1214(b)(4)(A)-(B), 1221(e)

MUST SHOW —

- **PROTECTED DISCLOSURE OF INFORMATION UNDER 5 U.S.C. § 2302(b)(8)**
- **PERSONNEL ACTION TAKEN NOT TAKEN, OR THREATENED**
- **ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE PROTECTED DISCLOSURE**
- **PROTECTED DISCLOSURE WAS A CONTRIBUTING FACTOR IN THE**

PROTECTED WHISTLEBLOWER DISCLOSURES

5 U.S.C. § 2302(b)(8)

- **VIOLATION OF LAW, RULE OR REGULATION** NO ***DE MINIMIS*** EXCEPTIONS

- **SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY**

  INCLUDES DANGERS TO SPECIFIC CLASS OF PERSONS AS WELL AS TO THE PUBLIC AT LARGE

PROTECTED WHISTLEBLOWER DISCLOSURES

5 U.S.C. § 2302(b)(8)

- **GROSS WASTE OF FUNDS**
  MORE THAN A DEBATABLE EXPENDITURE

- **GROSS MISMANAGEMENT**
  MORE THAN *DE MINIMIS* WRONGDOING OR NEGLIGENCE — AN ACTION THAT CREATES A RISK OF SIGNIFICANT ADVERSE IMPACT ON THE ACCOMPLISHMENT OF AN AGENCY'S MISSION

- **ABUSE OF AUTHORITY**
  AN ARBITRARY OR CAPRICIOUS EXERCISE OF POWER THAT INJURES ANOTHER, OR BENEFITS THE ABUSER OR OTHERS

PROTECTED WHISTLEBLOWER DISCLOSURES

5 U.S.C. § 2302(b)(8)

- GENERALLY PROTECTED WHEN MADE TO ANY PERSON (EXCEPT THE WRONGDOER)
- NEED NOT BE ACCURATE TO BE PROTECTED
- PROTECTED IF EMPLOYEE HAS A REASONABLE BELIEF THAT IT IS TRUE — TEST IS BOTH OBJECTIVE AND SUBJECTIVE
- CAN BE MADE —
  - ORALLY OR IN WRITING
  - AS PART OF AN EMPLOYEE'S DUTIES

PROTECTED WHISTLEBLOWER DISCLOSURES

5 U.S.C. § 2302(b)(8)

- **WHISTLEBLOWER NEED NOT BE THE FIRST TO DISCLOSE THE INFORMATION**
- **NO REQUIREMENT THAT EMPLOYEE GO THROUGH CHAIN OF COMMAND**
- **WHISTLEBLOWER'S PERSONAL MOTIVATION DOES NOT AFFECT REASONABLENESS OF A DISCLOSURE**
- **EMPLOYEE OR APPLICANT IS PROTECTED IF EMPLOYER MISTAKENLY BELIEVES HE OR SHE IS A WHISTLEBLOWER**

ELECTION OF REMEDIES:
PROHIBITED PERSONNEL PRACTICES
5 U.S.C. § 7121(g)(2)

- **EMPLOYEES COVERED BY COLLECTIVE BARGAINING AGREEMENTS MUST CHOOSE BETWEEN REMEDIES FOR PROHIBITED PERSONNEL PRACTICES**
- ***OPTIONS:***
  - **NEGOTIATED GRIEVANCE PROCEDURE**
  - **OSC**
  - **MERIT SYSTEMS PROTECTION BOARD**
- ***NOT* APPLICABLE TO ALLEGATIONS OF DISCRIMINATION**

ELECTION OF REMEDIES:
WHISTLEBLOWER REPRISAL
12 U.S.C. § 1441(a)(q)(1)-(2)

EMPLOYEES AND OTHER COVERED PERSONS ASSOCIATED WITH

- ***THE RESOLUTION TRUST CORPORATION, OR***
- ***THE THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD***

MUST CHOOSE BETWEEN REMEDIES FOR WHISTLEBLOWER REPRISAL AT —

- **5 U.S.C., CHAPTERS 12 AND 23, *OR***
- **FEDERAL HOME LOAN BANK ACT**

OSC DEFERRAL POLICY

5 C.F.R. § 1810.1

- **COVERS ALLEGATIONS OF DISCRIMINATION BASED ON —**
  - **RACE**
  - **COLOR**
  - **RELIGION**
  - **SEX**
  - **NATIONAL ORIGIN**
  - **AGE**
  - **HANDICAP**
- **OSC DEFERS SUCH ALLEGATIONS TO AGENCY AND EEOC DISCRIMINATION COMPLAINT PROCESSES**

OFFICE OF SPECIAL COUNSEL (OSC)

5 U.S.C. §§ 1211-19; 5 C.F.R. PART 1800

AUTHORIZED TO—

- **INVESTIGATE PROHIBITED PERSONNEL PRACTICES AND OTHER ACTIVITIES PROHIBITED BY CIVIL SERVICE LAW, RULE, OR REGULATION**
- **PROVIDE A SAFE CHANNEL FOR WHISTLEBLOWER DISCLOSURES BY FEDERAL EMPLOYEES, FORMER EMPLOYEES, AND APPLICANTS FOR EMPLOYMENT**
- **ADVISE ON AND ENFORCE HATCH ACT PROVISIONS ON POLITICAL ACTIVITY APPLICABLE TO FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES**

OTHER OSC JURISDICTION

5 U.S.C. § 1216

AUTHORIZED TO INVESTIGATE —

- **ARBITRARY AND CAPRICIOUS WITHHOLDING UNDER THE FREEDOM OF INFORMATION ACT**

  (DOES NOT APPLY TO WITHHOLDING OF FOREIGN INTELLIGENCE OR COUNTERINTELLIGENCE INFORMATION REQUIRED TO BE WITHHELD BY LAW OR EXECUTIVE ORDER)

- **ACTIVITIES PROHIBITED BY ANY CIVIL SERVICE LAW, RULE, OR REGULATION (INCLUDES POLITICAL INTRUSION IN PERSONNEL DECISIONMAKING)**

OTHER OSC JURISDICTION

5 U.S.C. § 1216 *(cont'd)*

AUTHORIZED TO INVESTIGATE —

- **<u>INVOLVEMENT IN PROHIBITED DISCRIMINATION</u> FOUND BY COURT OR APPROPRIATE ADMINISTRATIVE AUTHORITY TO HAVE OCCURRED DURING A PERSONNEL ACTION**

  (OSC *CANNOT* INVESTIGATE IF IT DETERMINES THAT MATTER CAN BE RESOLVED MORE APPROPRIATELY UNDER AN ADMINISTRATIVE APPEALS PROCEDURE)

OSC PROGRAM UNITS

SENIOR ADVISER
CARY SKLAR

SPECIAL COUNSEL
ELAINE KAPLAN
DEPUTY SPECIAL COUNSEL
TIMOTHY HANNAPEL

PROSECUTION DIVISION
WILLIAM E. REUKAUF
LEONARD M. DRIBINSKY

COMPLAINTS EXAMINING UNIT
ALICE WOMACK

DISCLOSURE UNIT
CATHERINE McMULLEN

HATCH ACT UNIT
KAREN DALHEIM

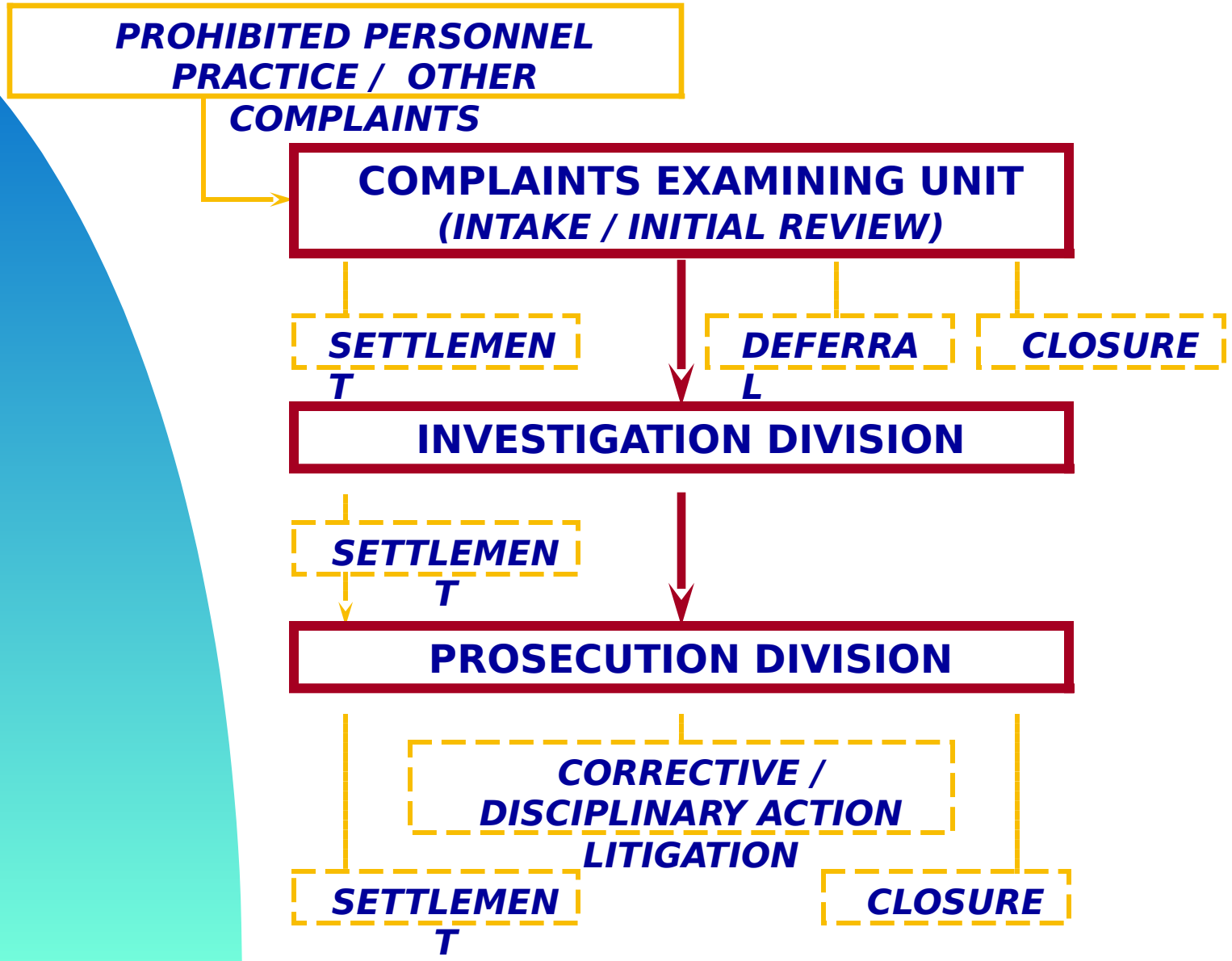
INVESTIGATION DIVISION
RUTH ROBINSON ERTEL

HEADQUARTERS TEAMS
WILLIAM SHEA / GARY HAMER

SAN FRANCISCO BAY AREA FIELD OFFICE
JACQUELINE MARTINEZ

DALLAS FIELD OFFICE
ANTHONY CARDILLO

HOW THE OSC PROCESSES A COMPLAINT



HOW THE OSC PROCESSES A COMPLAINT

COMPLAINTS EXAMINING UNIT:

- MAKES JURISDICTIONAL DETERMINATION
- SCREENS TO DETERMINE WHETHER TO —
  - REFER CASE FOR FULL FIELD INVESTIGATION, ***OR***
  - CLOSE (REVIEW COMMITTEE)
    - PRE-CLOSURE LETTER
    - OPPORTUNITY TO RESPOND

HOW THE OSC PROCESSES A COMPLAINT *(cont'd)*

***INVESTIGATION DIVISION*:**

- **CONDUCTS ON-SITE OR OTHER INQUIRIES**
- **INTERVIEWS WITNESSES AND GATHERS DOCUMENTS**
- **WORKS IN TEAMS WITH ATTORNEYS**
- **USES AGENCY LIAISON PROGRAM**
- **CONDUCTS SETTLEMENT NEGOTIATIONS**
- **ISSUES REPORTS OF INVESTIGATION**

HOW THE OSC PROCESSES A COMPLAINT *(cont'd)*

PROSECUTION DIVISION:

- **REVIEWS REPORT OF INVESTIGATION**
- **HANDLES SETTLEMENT NEGOTIATIONS**
- **RECOMMENDS WHETHER TO PROSECUTE**
- **WHERE REASONABLE GROUNDS EXIST —**
  - **DRAFTS LETTER TO AGENCY HEAD**
  - **SEEKS COMPLIANCE OR PETITION FOR CORRECTIVE ACTION**
  - **SEEKS DISCIPLINARY ACTION**
  - **ISSUES WAIVERS FOR AGENCY DISCIPLINARY ACTION**

OSC INVESTIGATIVE AUTHORITIES

5 U.S.C. § 1212(b)

OSC AUTHORIZED TO:

- **ADMINISTER OATHS**
- **ISSUE SUBPOENAS FOR —**
  - **ATTENDANCE AND TESTIMONY OF WITNESSES**
  - **PRODUCTION OF DOCUMENTARY OR OTHER EVIDENCE**
- **ORDER —**
  - **TAKING OF DEPOSITIONS**
  - **RESPONSES TO WRITTEN QUESTIONS**

OSC INVESTIGATIONS:
FEDERAL AGENCY / EMPLOYEE RESPONSIBILITIES
CIVIL SERVICE RULE 5.4 (5 C.F.R. PART 5)

- **AGENCIES REQUIRED TO —**
  - **MAKE EMPLOYEES AVAILABLE TO TESTIFY**
  - **PROVIDE PERTINENT RECORDS**
  - **OBTAIN OSC APPROVAL BEFORE TAKING DISCIPLINARY ACTION AGAINST AN EMPLOYEE FOR ANY ALLEGED PROHIBITED ACTIVITY, OR RELATED ACTIVITY, UNDER INVESTIGATION BY OSC**
- **EMPLOYEES REQUIRED TO —**
  - **PROVIDE INFORMATION, TESTIMONY, DOCUMENTS, AND MATERIAL (UNLESS DISCLOSURE IS PROHIBITED BY LAW OR REGULATION)**

LIMITS ON OSC DISCLOSURES OF INFORMATION

5 U.S.C. § 1212(g)

- OSC MAY NOT DISCLOSE INFORMATION ABOUT A COMPLAINANT, EXCEPT IN VERY LIMITED CIRCUMSTANCES

- OSC MAINTAINS CONFIDENTIALITY OF ITS REPORTS OF INVESTIGATION AND WITNESS STATEMENTS

  (REPORTS GENERALLY NOT DISCLOSED TO OUTSIDE PARTIES, INCLUDING COMPLAINANTS)

MERIT SYSTEMS PROTECTION BOARD (MSPB)

~~5 U.S.C. §§ 1201-04; 5 C.F.R. PARTS 1201, 1209, 1221~~

AUTHORIZED TO:

- **HEAR AND ADJUDICATE —**
  - **APPEALS FILED BY FEDERAL EMPLOYEES**
  - **ENFORCEMENT ACTIONS FILED BY THE OSC**
- **ORDER, IN CASES INVOLVING PROHIBITED PERSONNEL PRACTICES —**
  - **STAYS OF PERSONNEL ACTION**
  - **CORRECTIVE ACTION**

MERIT SYSTEMS PROTECTION BOARD (MSPB)

5 U.S.C. §§ 1201-04; 5 C.F.R. PART 1209

AUTHORIZED TO:

- **REFER FINDINGS OF PROHIBITED PERSONNEL PRACTICES TO THE OSC FOR INVESTIGATION AND POSSIBLE DISCIPLINARY ACTION**

- **ISSUE AND ENFORCE WITNESS PROTECTION ORDERS**

STAYS OF PERSONNEL ACTIONS

5 U.S.C. § 1214(b)(1)(A)

- **OSC CAN OBTAIN DELAY OF PERSONNEL ACTION ("STAY") THROUGH —**
  - **<u>NEGOTIATION</u> WITH AGENCY**
  - **<u>PETITION</u> TO MERIT SYSTEMS PROTECTION BOARD**
    - **BOARD MEMBER CAN STAY PERSONNEL ACTION (UP TO 45 DAYS) IF ACTION WAS TAKEN, OR IS TO BE TAKEN, AS RESULT OF PROHIBITED PERSONNEL PRACTICE**
    - **BOARD MAY EXTEND STAY (AFTER AGENCY COMMENT)**
- **STAY ONLY PRESERVES *STATUS QUO* — DOES *<u>NOT</u>* PROVIDE RETROACTIVE RELIEF**
- **OSC *CANNOT* ORDER STAY ON ITS**

CORRECTIVE ACTION

5 U.S.C. §§ 1214(g), 1221(g)(1)(A)

- **OSC REMEDY FOR MOST PROHIBITED PERSONNEL PRACTICES (INCLUDING REPRISAL FOR WHISTLEBLOWING)**

  [FOR VIOLATIONS OF 5 U.S.C. § 2302(b)(11) — ACTIONS VIOLATING VETERANS' PREFERENCE REQUIREMENTS — ON OR AFTER 10/31/98: CORRECTIVE ACTION PURSUED BY VETERANS EMPLOYMENT AND TRAINING SERVICE, DEPT. OF LABOR]

- **POSSIBLE TYPES INCLUDE —**

  - **JOB RESTORATION**

  - **REIMBURSEMENT OF ATTORNEY'S FEES, BACK PAY AND BENEFITS, MEDICAL AND OTHER COSTS AND DAMAGES**

CORRECTIVE ACTION: 5 U.S.C. § 2302(b)(11)

5 U.S.C. §§ 2302(e), 3330a-3330b

- **AUTHORITY FOR VIOLATIONS ON OR AFTER 10/31/98 EXERCISED BY VETERANS EMPLOYMENT AND TRAINING SERVICE (VETS) (LABOR DEPT.)**

  (DISCIPLINARY ACTION AUTHORITY EXERCISED BY OSC)

- **CORRECTIVE ACTION COMPLAINTS MUST BE FILED WITH VETS <u>WITHIN 60 DAYS</u> OF A VIOLATION**

  - **VETS INVESTIGATES AND ATTEMPTS TO RESOLVE THE COMPLAINT**
  - **IF VETS IS UNSUCCESSFUL, COMPLAINANT MAY APPEAL TO MERIT SYSTEMS PROTECTION BOARD OR U.S. DISTRICT COURT AFTER 60 DAYS**

CORRECTIVE ACTION:
WHISTLEBLOWER REPRISAL MATTERS
5 U.S.C. §§ 1214(b)(4)(B), 1221(e)(1)

CAN BE OBTAINED *IF* —

- **DISCLOSURE OF INFORMATION WAS A CONTRIBUTING FACTOR IN A PERSONNEL ACTION**

UNLESS

- **AGENCY SHOWS BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD HAVE TAKEN THE SAME PERSONNEL ACTION IN THE ABSENCE OF THE DISCLOSURE**

CONTRIBUTING FACTOR

ANY FACTOR WHICH ALONE OR IN CONNECTION WITH OTHERS TENDS TO AFFECT IN ANY WAY THE OUTCOME OF THE PERSONNEL ACTION AT ISSUE

- **CAN BE ESTABLISHED BY KNOWLEDGE / TIMING ALONE**
- **OFTEN ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE**

CLEAR AND CONVINCING EVIDENCE
(AGENCY DEFENSE)

- **AGENCY DEFENDS PERSONNEL ACTION BY SHOWING — BY *CLEAR AND CONVINCING EVIDENCE* — THAT IT WOULD HAVE TAKEN THE SAME ACTION WITHOUT THE DISCLOSURE**

- **CLEAR AND CONVINCING EVIDENCE DEFINED AS:**

  THAT MEASURE OR DEGREE OF PROOF WHICH WILL PRODUCE IN THE MIND OF THE TRIER OF FACTS A FIRM BELIEF OR CONVICTION AS TO THE ALLEGATIONS SOUGHT TO BE ESTABLISHED

- **HIGHER BURDEN OF PROOF THAN PREPONDERANT EVIDENCE**

CLEAR AND CONVINCING EVIDENCE
(AGENCY DEFENSE)

FACTORS:

- **STRENGTH OF THE EVIDENCE IN SUPPORT OF THE PERSONNEL ACTION**
- **EXISTENCE AND STRENGTH OF MOTIVE TO RETALIATE**
- **TREATMENT OF SIMILARLY SITUATED EMPLOYEES WHO ARE NOT WHISTLEBLOWERS**

DISCIPLINARY ACTION

5 U.S.C. § 1215

MAY BE SOUGHT BY THE OSC FOR —

- **PROHIBITED PERSONNEL PRACTICES**
- **HATCH ACT VIOLATIONS**
- **OTHER VIOLATIONS OF CIVIL SERVICE LAW, RULE, OR REGULATION**

DISCIPLINARY ACTION

5 U.S.C. § 1215

MAY BE SOUGHT BY THE OSC FROM —

- **THE MSPB**
- **AGENCY HEADS (FOR UNIFORMED SERVICE MEMBERS AND CONTRACTORS)**
- **THE PRESIDENT (FOR MOST PRESIDENTIAL APPOINTEES)**

DISCIPLINARY ACTION

5 U.S.C. § 1215

POSSIBLE PENALTIES —

- **REMOVAL, REDUCTION IN GRADE, SUSPENSION, OR REPRIMAND**
- **DEBARMENT FROM FEDERAL EMPLOYMENT (UP TO FIVE YEARS)**
- **CIVIL PENALTY (UP TO $1,100)**

DISCIPLINARY ACTION

5 U.S.C. § 1215

RIGHTS OF CHARGED EMPLOYEE INCLUDE —

- **OPPORTUNITY TO RESPOND**
- **LEGAL OR OTHER REPRESENTATION**
- **HEARING BEFORE AN MSPB ADMINISTRATIVE LAW JUDGE**
- **WRITTEN DECISION**

INDIVIDUAL RIGHT OF ACTION (IRA)

5 U.S.C. § 1221; 5 C.F.R. PART 1209

- **LIMITED TO CLAIMS OF ACTUAL OR THREATENED REPRISAL FOR WHISTLEBLOWING**
- **CAN BE FILED BY EMPLOYEES, FORMER EMPLOYEES, OR APPLICANTS FOR EMPLOYMENT (EXCEPTIONS INCLUDE POSTAL SERVICE EMPLOYEES)**
- **AVAILABLE TO EMPLOYEES SERVING UNDER MOST APPOINTMENTS**
  - **INCLUDES PROBATIONARY, TEMPORARY, EXCEPTED SERVICE EMPLOYEES**
  - **DOES NOT INCLUDE SCHEDULE C, OTHER POLITICAL APPOINTEES**

INDIVIDUAL RIGHT OF ACTION (IRA)

5 U.S.C. § 1221; 5 C.F.R. PART 1209

- INDIVIDUAL MAY ONLY FILE IRA AFTER WHISTLEBLOWER REPRISAL COMPLAINT TO THE OSC, WHICH MAY SEEK —
  - STAY OF PERSONNEL ACTION
  - CORRECTIVE ACTION
- IRA CAN BE FILED WITH MSPB IF THE OSC —
  - CLOSES CASE AFTER INVESTIGATION

INDIVIDUAL RIGHT OF ACTION (IRA)

5 U.S.C. § 1221; 5 C.F.R. PART 1209 (*cont'd*)

- **MSPB MAY REFUSE TO HEAR IRAs INVOLVING DISCLOSURES NOT SPECIFICALLY RAISED IN COMPLAINTS TO THE OSC**

- **MSPB CAN ORDER —**
  - **STAY OF PERSONNEL ACTION**
  - **CORRECTIVE ACTION**

OSC INTERVENTION

5 U.S.C. § 1212(c)

THE OSC —

- **MAY INTERVENE IN MSPB PROCEEDINGS**
- **MAY NOT INTERVENE, WITHOUT CONSENT OF THE PERSON INITIATING THE PROCEEDING, IN —**
  - **INDIVIDUAL RIGHTS OF ACTION**
  - **MATTERS APPEALABLE TO THE MSPB UNDER 5 U.S.C. §**

SOME RECENT DECISIONS AND ISSUES AFFECTING WHISTLEBLOWERS

- **KEWLEY V. DHHS, 153 F.2D 1357 (FED. CIR. 1998): KNOWLEDGE / TIMING ALONE ESTABLISHED PRIMA FACIE CASE UNDER 1994 AMENDMENTS**

- **WILLIS V. DEPT. OF AGRICULTURE, 141 F.2D 1139 (FED. CIR., 1998): DISCLOSURES MADE TO SUPERVISOR IN THE LINE OF DUTY ARE NOT PROTECTED BY WHISTLEBLOWER PROTECTION ACT**

- **KINNEY V. DEPT. OF AGRICULTURE, MSPB # SE-1121-96-0569-P-1 (MARCH 11, 1999): CONSEQUENTIAL DAMAGES ARE LIMITED TO OUT-OF-POCKET LOSSES; NO RECOVERY FOR NON-PECUNIARY HARM SUCH AS MENTAL OR EMOTIONAL DISTRESS**

SOME RECENT DECISIONS AND ISSUES AFFECTING WHISTLEBLOWERS

- **SPECIAL COUNSEL V. BEAL, MSPB # CB-1215-94-0036-R-1 (MARCH 26, 1999): MSPB MAY ORDER DISCIPLINE TO BE IMPOSED BY THE SUBSEQUENT FEDERAL EMPLOYER OF AN OFFICIAL WHO COMMITS A PROHIBITED PERSONNEL PRACTICE**

- **ROACH V. ARMY, MSPB # DC-0752-97-0251-W-1 (JUNE 11, 1999): REVOCATION OF A SECURITY CLEARANCE IS NOT A COVERED "PERSONNEL ACTION" UNDER THE WHISTLEBLOWER PROTECTION ACT**

SOME RECENT DECISIONS AND ISSUES AFFECTING WHISTLEBLOWERS

- **COSTELLO V. SPECIAL COUNSEL, NO. 97-3410 (FED CIR., PENDING): WHAT IS OSC'S BURDEN OF PROOF IN DISCIPLINARY ACTION CASES?**

- **SANTELLA V. SPECIAL COUNSEL, MSPB # CB-1215-91-0007-A-1 (PENDING): ATTORNEY FEE AWARDS IN DISCIPLINARY ACTION CASES BROUGHT BY THE OSC — IS THE EMPLOYING AGENCY OR OSC LIABLE AND UNDER WHAT CIRCUMSTANCES?**

OSC DISCLOSURE HOTLINE

5 U.S.C. § 1213

SAFE CHANNEL FOR DISCLOSURES BY FEDERAL EMPLOYEES, FORMER EMPLOYEES, AND APPLICANTS OF ANY INFORMATION EVIDENCING —

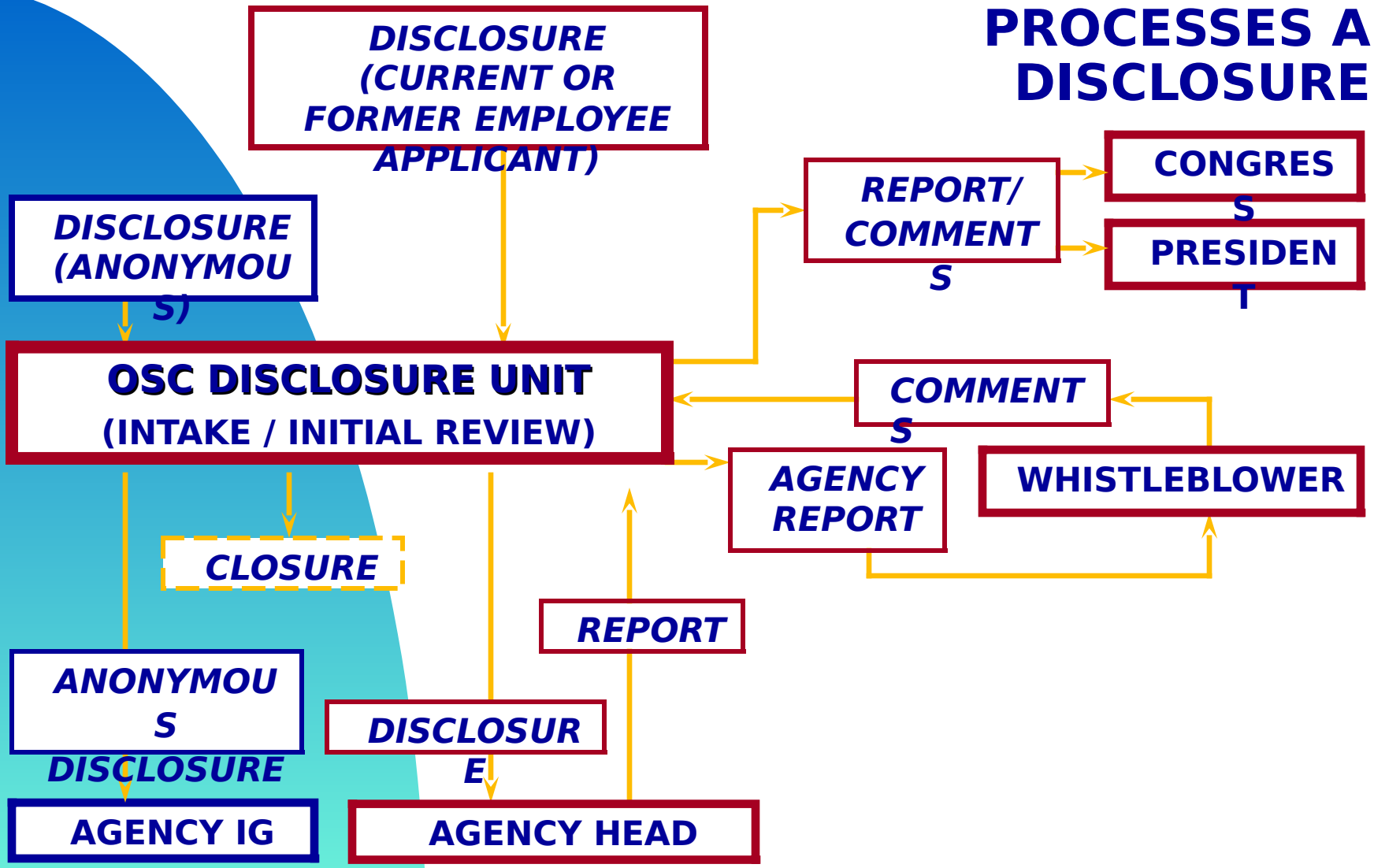
- **A VIOLATION OF ANY LAW, RULE, OR REGULATION**
- **GROSS MISMANAGEMENT**
- **A GROSS WASTE OF FUNDS**
- **AN ABUSE OF AUTHORITY**
- **A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH AND SAFETY**

OSC DISCLOSURE HOTLINE

5 U.S.C. § 1213 *(cont'd)*

- **NO DISCLOSURE OF SOURCE'S IDENTITY WITHOUT CONSENT**
- **AFTER "SUBSTANTIAL LIKELIHOOD" DETERMINATION, SPECIAL COUNSEL AUTHORIZED TO DIRECT AGENCY INVOLVED TO —**
  - **INVESTIGATE ALLEGATION(S) [OSC CANNOT INVESTIGATE HOTLINE DISCLOSURES]**
  - **REPORT ON RESULTS AND CORRECTIVE ACTION TO OSC**
- **SPECIAL COUNSEL SENDS AGENCY REPORTS WITH WHISTLEBLOWER COMMENTS TO:**
    - **PRESIDENT**
    - **CONGRESS**

HOW THE OSC PROCESSES A DISCLOSURE



FEDERAL HATCH ACT

5 U.S.C. §§ 7321-26; 5 C.F.R. PART 734

- **1993 AMENDMENTS EXPANDED RIGHTS OF MOST FEDERAL EMPLOYEES TO ACTIVELY PARTICIPATE IN PARTISAN POLITICAL MANAGEMENT AND POLITICAL CAMPAIGNS**

- **CERTAIN AGENCIES AND EMPLOYEES CONTINUE TO BE RESTRICTED FROM ENGAGING IN PARTISAN POLITICAL ACTIVITY**

FEDERAL HATCH ACT

5 U.S.C. §§ 7321-26; 5 C.F.R. PART 734

- **ACT APPLIES TO —**
  - **CIVILIAN FEDERAL EMPLOYEES**
  - **PART-TIME EMPLOYEES**
  - **POSTAL SERVICE EMPLOYEES**
  - **D.C. GOVERNMENT EMPLOYEES**
  - **SPECIAL GOVERNMENT EMPLOYEES, AND OTHERS WORKING ON AN OCCASIONAL OR INTERMITTENT BASIS, WHEN ENGAGED IN GOVERNMENT BUSINESS**
- **DOES NOT APPLY TO PRESIDENT AND VICE PRESIDENT**

FEDERAL HATCH ACT DOs

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B

FEDERAL EMPLOYEES *MAY* —

- **BE CANDIDATES FOR PUBLIC OFFICE IN NONPARTISAN ELECTIONS**
- **REGISTER AND VOTE AS THEY CHOOSE**
- **ASSIST IN VOTER REGISTRATION DRIVES (CERTAIN EMPLOYEES RESTRICTED)**
- **EXPRESS OPINIONS ABOUT CANDIDATES AND ISSUES**
- **CONTRIBUTE MONEY TO POLITICAL ORGANIZATIONS**
- **ATTEND POLITICAL FUNDRAISING FUNCTIONS**

FEDERAL HATCH ACT DOs

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B

FEDERAL EMPLOYEES *MAY* —

- **ATTEND AND BE ACTIVE AT POLITICAL RALLIES AND MEETINGS (CERTAIN EMPLOYEES RESTRICTED)**
- **JOIN AND BE ACTIVE MEMBER OF A POLITICAL PARTY OR CLUB (CERTAIN EMPLOYEES RESTRICTED)**
- **SIGN NOMINATING PETITIONS**
- **CAMPAIGN FOR OR AGAINST REFERENDUM QUESTIONS, CONSTITUTIONAL AMENDMENTS, MUNICIPAL ORDINANCES**

FEDERAL HATCH ACT DOs

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B

FEDERAL EMPLOYEES (EXCEPT THOSE WHOSE POLITICAL ACTIVITIES ARE RESTRICTED) *MAY* —

- **CAMPAIGN FOR OR AGAINST CANDIDATES IN PARTISAN ELECTIONS**
- **MAKE CAMPAIGN SPEECHES FOR CANDIDATES IN PARTISAN ELECTIONS**
- **DISTRIBUTE CAMPAIGN LITERATURE IN PARTISAN ELECTIONS**
- **HOLD OFFICE IN POLITICAL CLUBS OR**

FEDERAL HATCH ACT DON'Ts

5 U.S.C. §§ 7323-24; 5 C.F.R. PART 734, SUBPART C

FEDERAL EMPLOYEES MAY *NOT* —

- **USE OFFICIAL AUTHORITY OR INFLUENCE TO INTERFERE WITH AN ELECTION**
- **SOLICIT OR DISCOURAGE POLITICAL ACTIVITY OF ANYONE WITH BUSINESS BEFORE THEIR AGENCY**
- **SOLICIT OR RECEIVE POLITICAL CONTRIBUTIONS (MAY BE DONE IN CERTAIN LIMITED SITUATIONS BY FEDERAL LABOR OR OTHER EMPLOYEE ORGANIZATIONS)**
- **BE CANDIDATES FOR PUBLIC OFFICE IN PARTISAN ELECTIONS**

FEDERAL HATCH ACT DON'Ts

5 U.S.C. §§ 7323-24; 5 C.F.R. PART 734, SUBPART C

FEDERAL EMPLOYEES MAY *NOT* —

- **ENGAGE IN POLITICAL ACTIVITY WHILE —**
  - **ON DUTY**
  - **IN A GOVERNMENT OFFICE**
  - **WEARING AN OFFICIAL UNIFORM**
  - **USING A GOVERNMENT VEHICLE**

FEDERAL HATCH ACT:
RESTRICTED AGENCIES
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D

AGENCIES IN WHICH EMPLOYEES ARE STILL SUBJECT TO RESTRICTIONS ON PARTISAN POLITICAL ACTIVITY:

CENTRAL INTELLIGENCE AGENCY
CRIMINAL DIVISION (DOJ)
DEFENSE INTELLIGENCE AGENCY
FEDERAL BUREAU OF INVESTIGATION
FEDERAL ELECTION COMMISSION
MERIT SYSTEMS PROTECTION BOARD
NATIONAL IMAGERY AND MAPPING AGENCY
NATIONAL SECURITY AGENCY
NATIONAL SECURITY COUNCIL
OFFICE OF CRIMINAL INVESTIGATION (IRS)
OFFICE OF INVESTIGATIVE PROGRAMS (CUSTOMS)
OFFICE OF LAW ENFORCEMENT (BATF)
OFFICE OF SPECIAL COUNSEL
SECRET SERVICE

FEDERAL HATCH ACT:
RESTRICTED EMPLOYEES
5 U.S.C. § 7323(b); 5 C.F.R. PART 734, SUBPART D

EMPLOYEES STILL SUBJECT TO RESTRICTIONS ON PARTISAN POLITICAL ACTIVITY:

ADMINISTRATIVE LAW JUDGES

CAREER SES

CONTRACTS APPEALS BOARDS

FEDERAL HATCH ACT DOs
FOR RESTRICTED EMPLOYEES
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D

EMPLOYEES WHO CANNOT ENGAGE IN PARTISAN POLITICAL ACTIVITY *MAY* —

- **EXPRESS OPINIONS ABOUT CANDIDATES AND ISSUES**
- **REGISTER AND VOTE AS THEY CHOOSE**
- **ASSIST IN NON-PARTISAN VOTER REGISTRATION DRIVES**
- **PARTICIPATE IN CAMPAIGNS IN WHICH NONE OF THE CANDIDATES REPRESENTS A POLITICAL PARTY**

FEDERAL HATCH ACT DOs
FOR RESTRICTED EMPLOYEES
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D

EMPLOYEES WHO CANNOT ENGAGE IN PARTISAN POLITICAL ACTIVITY *MAY* —

- **ATTEND POLITICAL RALLIES AND MEETINGS**
- **JOIN POLITICAL CLUBS OR PARTIES**
- **SIGN NOMINATING PETITIONS**
- **CAMPAIGN FOR OR AGAINST REFERENDUM QUESTIONS, CONSTITUTIONAL AMENDMENTS, MUNICIPAL ORDINANCES**

FEDERAL HATCH ACT DON'Ts
FOR RESTRICTED EMPLOYEES
5 C.F.R. PART 734, SUBPART D

EMPLOYEES WHO CANNOT ENGAGE IN PARTISAN POLITICAL ACTIVITY MAY *NOT* —

- **BE CANDIDATES FOR OFFICE IN PARTISAN ELECTIONS**
- **CAMPAIGN FOR OR AGAINST CANDIDATES OR SLATES OF CANDIDATES IN PARTISAN ELECTIONS**
- **MAKE CAMPAIGN SPEECHES FOR CANDIDATES IN PARTISAN ELECTIONS**
- **SOLICIT OR RECEIVE CONTRIBUTIONS FOR PARTISAN POLITICAL ORGANIZATIONS**

FEDERAL HATCH ACT DON'Ts
FOR RESTRICTED EMPLOYEES
5 C.F.R. PART 734, SUBPART D

EMPLOYEES WHO CANNOT ENGAGE IN PARTISAN POLITICAL ACTIVITY MAY *NOT* —

- **COLLECT CONTRIBUTIONS FOR, OR SELL TICKETS TO, POLITICAL FUNDRAISING FUNCTIONS**
- **DISTRIBUTE CAMPAIGN MATERIAL IN PARTISAN ELECTIONS**
- **ORGANIZE OR MANAGE PARTISAN POLITICAL RALLIES OR MEETINGS**
- **HOLD OFFICE IN PARTISAN POLIITICAL CLUBS OR PARTIES**

FEDERAL HATCH ACT DON'Ts
FOR RESTRICTED EMPLOYEES
5 C.F.R. PART 734, SUBPART D

EMPLOYEES WHO CANNOT ENGAGE IN PARTISAN POLITICAL ACTIVITY MAY *NOT* —

- **CIRCULATE NOMINATING PETITIONSIN PARTISAN ELECTIONS**
- **TAKE PART IN DELIBERATIONS OR PROCEEDINGS OF PARTY CONVENTIONS OR CONVENTION COMMITTEES**
- **REGISTER VOTERS ON BEHALF OF A PARTICULAR POLITICAL PARTY**

FREQUENTLY ASKED QUESTIONS
(FEDERAL HATCH ACT)
5 U.S.C. §§ 7323-24; 5 C.F.R. PART 734

Q: **CAN I MAKE A CONTRIBUTION TO THE CAMPAIGN OF A PARTISAN CANDIDATE, OR TO A POLITICAL PARTY OR ORGANIZATION?**

A: ***YES***. **ANY FEDERAL EMPLOYEE MAY CONTRIBUTE TO THE CAMPAIGN OF A PARTISAN CANDIDATE, OR TO A POLITICAL PARTY OR ORGANIZATION.**

FREQUENTLY ASKED QUESTIONS
(FEDERAL HATCH ACT)
5 U.S.C. §§ 7323-24; 5 C.F.R. PART 734

Q: **CAN I HELP ORGANIZE A POLITICAL FUNDRAISER?**

A: **UNLESS YOU ARE AN EMPLOYEE WHOSE POLITICAL ACTIVITIES ARE RESTRICTED, YOU *MAY* ORGANIZE A FUNDRAISER, INCLUDING SUPPLYING NAMES FOR THE INVITATION LIST.**

YOU MAY *NOT* PERSONALLY SOLICIT, ACCEPT, OR RECEIVE

FREQUENTLY ASKED QUESTIONS
(FEDERAL HATCH ACT)
5 U.S.C. §§ 7323-24; 5 C.F.R. PART 734

Q: **CAN I SPEAK AT A POLITICAL FUNDRAISER?**

A: **IF YOU ARE AN EMPLOYEE PERMITTED TO ENGAGE IN PARTISAN POLITICAL ACTIVITY, YOU *MAY* SPEAK AT A FUNDRAISER, AS LONG AS YOU —**

- **ARE *NOT* ON DUTY, AND**
- **DO *NOT* SOLICIT POLITICAL CONTRIBUTIONS.**

FREQUENTLY ASKED QUESTIONS
(FEDERAL HATCH ACT)
5 U.S.C. §§ 7323-24; 5 C.F.R. PART 734

Q: **IF I'M GOING TO SPEAK AT A POLITICAL FUNDRAISER, WHAT INFORMATION ABOUT ME CAN BE PRINTED ON THE INVITATIONS?**

***A*:** **UNLESS YOU ARE AN EMPLOYEE WHOSE POLITICAL ACTIVITIES ARE RESTRICTED, YOUR NAME CAN APPEAR AS A GUEST SPEAKER.**

- **REFERENCE SHOULD ***NOT*** SUGGEST THAT YOU SOLICIT OR ENCOURAGE CONTRIBUTIONS.**
- **FUNDRAISER INVITATIONS MAY ***NOT*** INCLUDE YOUR OFFICIAL TITLE (BUT EMPLOYEE ORDINARILY ADDRESSED BY GENERAL TERM — *e.g.*, "THE HONORABLE" — MAY USE OR PERMIT THE USE OF THAT TERM ON THE**

FREQUENTLY ASKED QUESTIONS
(FEDERAL HATCH ACT)
5 U.S.C. §§ 7323-24; 5 C.F.R. PART 734

Q: **CAN I ATTEND A STATE OR NATIONAL PARTY CONVENTION? IF SO, IN WHAT CAPACITY?**

A: ***YES***. **IF YOU ARE AN EMPLOYEE PERMITTED TO ENGAGE IN PARTISAN POLITICAL ACTIVITY, YOU MAY SERVE AS A DELEGATE, ALTERNATE, OR PROXY TO A STATE OR NATIONAL PARTY CONVENTION.**

FREQUENTLY ASKED QUESTIONS
(FEDERAL HATCH ACT)
5 U.S.C. §§ 7323-24; 5 C.F.R. PART 734

Q: **IF I RUN AS A CANDIDATE FOR PUBLIC OFFICE IN A NONPARTISAN ELECTION, DOES THE HATCH ACT ALLOW ME TO ASK FOR AND ACCEPT POLITICAL CONTRIBUTIONS?**

A: **UNDER THE HATCH ACT, IF YOU ARE A CANDIDATE FOR PUBLIC OFFICE IN A <u>NONPARTISAN</u> ELECTION, YOU *<u>MAY</u>* SOLICIT, ACCEPT, OR RECEIVE POLITICAL CONTRIBUTIONS FOR YOUR OWN CAMPAIGN.**

FREQUENTLY ASKED QUESTIONS
(FEDERAL HATCH ACT)
5 U.S.C. §§ 7323-24; 5 C.F.R. PART 734

Q: **MAY I DISTRIBUTE BROCHURES FOR A POLITICAL PARTY TO PEOPLE ARRIVING AT A POLLING PLACE ON ELECTION DAY?**

A: ***YES***. **IF YOU ARE AN EMPLOYEE PERMITTED TO ENGAGE IN PARTISAN POLITICAL ACTIVITY, YOU MAY STAND OUTSIDE A POLLING PLACE ON ELECTION DAY AND HAND OUT BROCHURES ON BEHALF OF A PARTISAN POLITICAL CANDIDATE OR POLITICAL PARTY.**

FEDERAL HATCH ACT:
OTHER COVERAGE
5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E

APPLIES TO EMPLOYEES —

- **PAID FROM APPROPRIATION FOR EXECUTIVE OFFICE OF THE PRESIDENT, *OR***
- **PRESIDENTIALLY APPOINTED, SENATE-CONFIRMED**

WHO —

- **OCCUPY POSITIONS LOCATED IN THE U.S., *AND***
- **DETERMINE POLICIES TO BE PURSUED IN**
  - **RELATIONS WITH FOREIGN POWERS, *OR***
  - **NATIONWIDE ADMINISTRATION OF**

FEDERAL HATCH ACT:
OTHER COVERAGE *(cont'd)*
5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E

SUCH EMPLOYEES MAY ENGAGE IN POLITICAL ACTIVITY WHILE —

- ***ON DUTY***
- ***IN A GOVERNMENT ROOM OR BUILDING***
- ***WEARING A UNIFORM OR OFFICIAL INSIGNIA***
- ***USING A GOVERNMENT VEHICLE***

IF **COSTS ASSOCIATED WITH POLITICAL ACTIVITY ARE *NOT* PAID FOR BY MONEY DERIVED FROM THE U.S. TREASURY**

FEDERAL HATCH ACT:
DESIGNATED COMMUNITIES
5 U.S.C. § 7325; 5 C.F.R. PART 733

- **FEDERAL EMPLOYEE RESIDENTS OF COMMUNITIES DESIGNATED BY THE OFFICE OF PERSONNEL MANAGEMENT MAY RUN AS INDEPENDENT CANDIDATES IN LOCAL PARTISAN ELECTIONS**

- **COMMUNITY LOCALES LIMITED TO —**
  - **DESIGNATED D.C. SUBURBS IN MARYLAND AND VIRGINIA**
  - **OTHER DESIGNATED MUNICIPALITIES IN ALASKA, ARIZONA, CALIFORNIA, GEORGIA, INDIANA, TENNESSEE, WASHINGTON**

OTHER HATCH ACT QUESTIONS

5 U.S.C. §§ 1212(f); 5 C.F.R. PARTS 733-734

SOURCES OF ADVICE —

- **CODE OF FEDERAL REGULATIONS (TITLE 5)**
  ANSWERS QUESTIONS ABOUT ALLOWABLE POLITICAL ACTIVITY

- **OFFICE OF SPECIAL COUNSEL**
  PROVIDES ADVISORY OPINIONS ON QUESTIONS ABOUT PERMISSIBLE POLITICAL ACTIVITY NOT

PENALTIES FOR VIOLATION
(FEDERAL HATCH ACT)
5 U.S.C. § 7326

MSPB MAY ORDER EMPLOYEE'S —

- **REMOVAL**

OR

- **SUSPENSION (30-DAY MINIMUM)**

OTHER OSC JURISDICTION

UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT

38 U.S.C. § 4301, *et seq.*

- **DISCRIMINATION PROHIBITED IN FEDERAL, STATE, AND PRIVATE EMPLOYMENT OR REEMPLOYMENT OF VETERANS AND RESERVISTS**

- **FEDERAL GOVERNMENT TO BE A MODEL EMPLOYER**

- **AGENCIES TO DEVELOP EMPLOYMENT AND REEMPLOYMENT POLICIES AND PROCEDURES**

OTHER OSC JURISDICTION
UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT
38 U.S.C. § 4301, *et seq.* (cont'd)

- **PLACEMENT AID**
  - **OFFICE OF PERSONNEL MANAGEMENT**
- **INVESTIGATION**
  - **VETERANS EMPLOYMENT AND TRAINING SERVICE (VETS), DEPARTMENT OF LABOR**
- **LITIGATION AND ADJUDICATION**
  - **OSC**
  - **MSPB**
  - **FEDERAL DISTRICT COURTS**

OTHER OSC JURISDICTION

UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT

38 U.S.C. § 4301, *et seq.* (cont'd)

INVESTIGATION [U.S. DEPARTMENT OF LABOR]

- **VETERANS AND RESERVISTS ALLEGING DENIAL OF FEDERAL EMPLOYMENT OR RE-EMPLOYMENT RIGHTS *MUST* FIRST FILE COMPLAINT WITH VETERANS EMPLOYMENT AND TRAINING SERVICE (VETS) AT LABOR DEPT.**

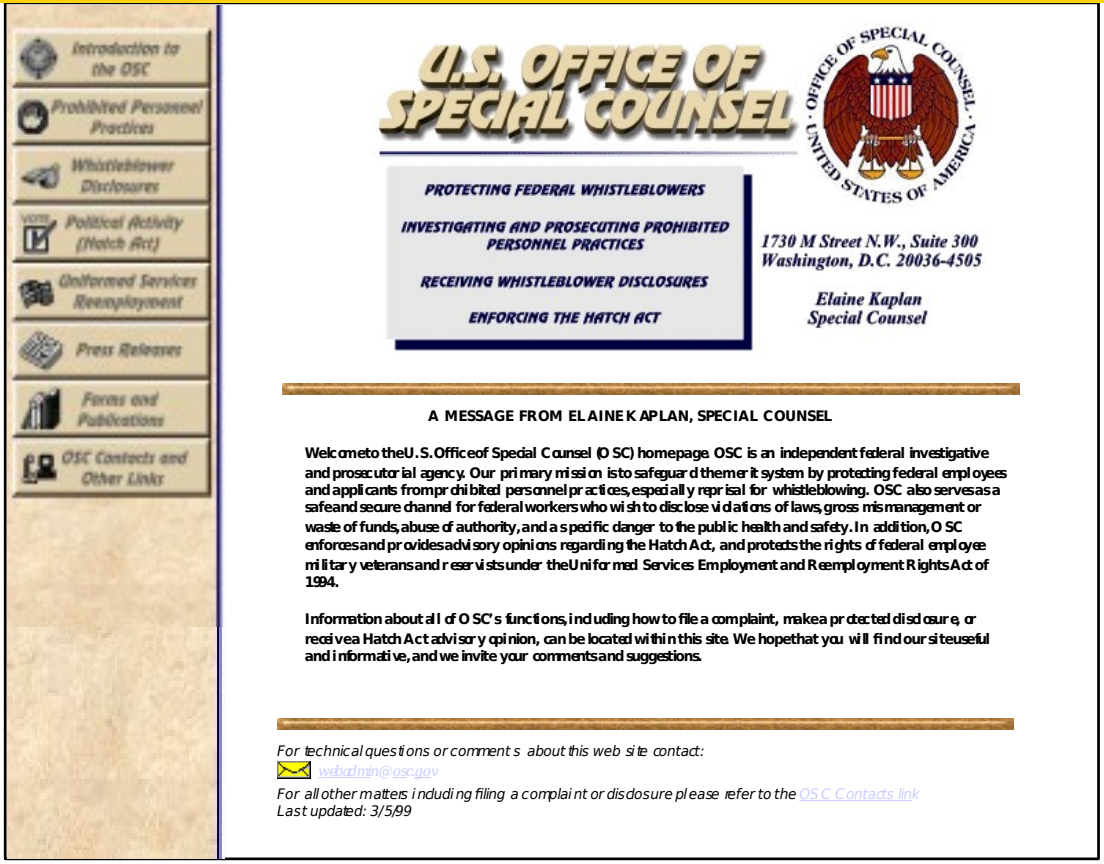
- **OSC NOT AUTHORIZED TO PURSUE COMPLAINT UNTIL *AFTER* VETS' ACTION**

OTHER OSC JURISDICTION
UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT
38 U.S.C. § 4301, *et seq.* (cont'd)

LITIGATION [OSC]

- **IF VETS CANNOT RESOLVE MATTER, CLAIMANT MAY REQUEST REFERRAL OF MATTER TO OSC**
- **OSC MAY FILE ACTION BEFORE THE MSPB AND FEDERAL DISTRICT COURT ON CLAIMANT'S BEHALF**
- **SUCCESSFUL CLAIMANT MAY RECEIVE —**
  - **EMPLOYMENT BENEFITS DENIED AS RESULT OF VIOLATION**
  - **ATTORNEY'S FEES, EXPERT WITNESS FEES, OTHER LITIGATION EXPENSES**

OSC WEB SITE (*http://www.osc.gov*)



PHONE / E-MAIL CONTACTS
OFFICE OF SPECIAL COUNSEL

COMPLAINTS: (202) 653-7188
(PROHIBITED PERSONNEL (800) 872-9855
PRACTICE, HATCH ACT, OTHERS)

DISCLOSURE HOTLINE: (202) 653-9125
(800) 572-2249

HATCH ACT UNIT: (800) 85-HATCH
(202) 653-7143

hatchact@osc.gov

PUBLIC INFORMATION: (202) 653-7984

OSC SPEAKERS / OUTREACH: (202) 653-6006

MAIL CONTACTS
OFFICE OF SPECIAL COUNSEL

U.S. OFFICE OF SPECIAL COUNSEL

1730 M STREET, N.W. (SUITE 300)

WASHINGTON, DC 20036-4505

FORMS
OFFICE OF SPECIAL COUNSEL

COMPLAINT FORM

WHISTLEBLOWER DISCLOSURE FORM

POLICY STATEMENT CONCERNING THE DISCLOSURE OF INFORMATION REGARDING PROHIBITED PERSONNEL PRACTICE COMPLAINTS

HOW YOUR COMPLAINT WILL BE PROCESSED BY THE OFFICE OF SPECIAL COUNSEL

WHAT TO EXPECT NOW THAT YOUR COMPLAINT HAS BEEN REFERRED FOR FURTHER INVESTIGATION

WHAT TO EXPECT NOW THAT YOUR COMPLAINT HAS BEEN REFERRED TO OSC'S PROSECUTION

BROCHURES
OFFICE OF SPECIAL COUNSEL

THE ROLE OF THE U.S. OFFICE OF SPECIAL COUNSEL
(GPO # 028-004-00105-9; ALSO AVAILABLE AT OSC WEB SITE: *http://www.osc.gov*)

✹

YOUR RIGHTS AS A FEDERAL EMPLOYEE
(WEB SITE)

✹

POLITICAL ACTIVITY AND THE FEDERAL EMPLOYEE
(GPO # 062-000-00048-1 / WEB SITE)

✹

POLITICAL ACTIVITY AND THE STATE AND LOCAL EMPLOYEE
(GPO # 062-000-00049-0 / WEB SITE)

✹

A GUIDE TO RIGHTS AND REMEDIES OF FEDERAL EMPLOYEES UNDER 5 U.S.C., CHAPTERS 12 & 23

POSTERS
OFFICE OF SPECIAL COUNSEL

PROHIBITED PERSONNEL PRACTICES
(GPO # 452909 - 4/99 EDITION)

WHISTLEBLOWING
(GPO # 452910 - 4/99 EDITION)

POLITICAL ACTIVITY
AND THE FEDERAL EMPLOYEE
(GPO # 452908 - 3/98 EDITION)

RULES ON POLITICAL ACTIVITY
(STATE AND LOCAL HATCH ACT)
(GPO # 452911 - 4/99 EDITION)

BROCHURES
MERIT SYSTEMS PROTECTION BOARD
(http://www.mspb.gov)

AN INTRODUCTION TO MSPB

✹

QUESTIONS & ANSWERS ABOUT APPEALS

✹

QUESTIONS & ANSWERS

ABOUT WHISTLEBLOWER APPEALS